Supreme Court, U.S.
FILED
MAY 19 2010
OFFICE OF THE CLERK

No. 09-1258

In The
Supreme Court of the United States

LONG BEACH MORTGAGE COMPANY,

Petitioner,

v.

ROBB EVANS, AS RECEIVER
FOR TLC AMERICA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Texas, Fifth District

BRIEF IN OPPOSITION

KAREN L. HART
Counsel of Record
RANDALL K. LINDLEY
ROSS A. WILLIAMS
BELL NUNNALLY & MARTIN LLP
3232 McKinney Avenue, Suite 1400
Dallas, Texas 75204-2429
Telephone: (214) 740-1400
Facsimile: (214) 740-5744
karenh@bellnunnally.com

Attorneys for Respondent Robb Evans, as Receiver for TLC America, Inc.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Does this Court have jurisdiction over this case and should the Petition for a Writ of Certiorari be granted where:

a) This case concerns resolving the priority of claims to real property under Texas law, with no important federal issues to be decided by this Court.

b) The decision of the intermediate Texas appeals court finding that Respondent and the California receivership court had proper in rem jurisdiction over the real property at issue is correct and consistent with federal law, including federal circuit authorities, which are likewise in harmony. Respondent complied with 28 U.S.C. Section 754's requirements, timely filing of his order of appointment in Texas.

c) Petitioner admits that 28 U.S.C. Sections 754 and 1692 provide a receiver jurisdiction over receivership assets no matter where they are located. Sections 754 and 1692 are congressional mandates governing the powers and jurisdiction of federal receivers and receivership courts, trumping the local action doctrine and demonstrating that Petitioner's implied preemption arguments are meritless.

CORPORATE DISCLOSURE STATEMENT

Robb Evans is a federally appointed receiver for TLC America, Inc. Robb Evans is an individual. TLC America, Inc. is neither a subsidiary nor an affiliate of a publicly held company. No publicly owned company owns 10% or more of the shares of TLC America, Inc.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. Section 754 (2006) provides:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C. Section 1692 (2006) provides:

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the

property shall be entered of record in each of such districts.

STATEMENT OF THE CASE

Because this case solely concerns the priority of interests to certain real property located in Dallas, Texas (the "Marquette Property") under Texas law, there are no issues for this Court to review. Respondent Robb Evans, as Receiver for TLC America, Inc. ("Respondent" or the "Receiver") was appointed as receiver to represent elderly investors who were defrauded in connection with a real estate investment scheme. The Receiver was appointed to return assets to the receivership estate for the benefit of the investors, who have been waiting nearly ten years for final disposition of the Marquette Property, the last remaining receivership asset. In connection with the Marquette Property, the Receiver filed a lis pendens in the Dallas County Real Property Records long before Petitioner Long Beach Mortgage Company ("Petitioner" or "Long Beach") filed a mortgage lien on the Property. Petitioner refused to release its later filed and recorded lien, and the Receiver was forced to file a declaratory judgment action in Texas state court against Long Beach to have his lis pendens declared superior to Long Beach's lien claim.

Three levels of Texas courts, from the Dallas trial court to the Texas Supreme Court, which denied review, have now correctly decided that the Receiver's

lis pendens and resulting interest in the Marquette Property are superior to Petitioner's lien claim, which was declared void and of no force or effect concerning the Property. Ultimately, this case arises purely as a function of state law governing priority of claims to real property under state law. Long Beach's Petition filed before this Court is simply its last-ditch effort to delay the inevitable and to delay disposition of the Marquette Property, which the Receiver has been waiting to sell as the fully vested title holder for years now. Significantly, if the Court were to review this case, its decision would only affect the parties' narrow priority dispute, a state law issue outside the jurisdiction of this Court.

Recognizing that it has not and cannot win the priority dispute to the Marquette Property with respect to its lien claim, which was correctly determined to be inferior to the Receiver's lis pendens, Petitioner glosses over the state law that is at the core of this case and has instead invented "federal questions" that are inapplicable and invalid. As such, and in its misguided quest to invalidate the Receiver's superior lis pendens, Long Beach improperly attempts to collaterally attack the final judgment of the U.S. District Court for the Central District of California (the "California Court"), where the court entered a constructive trust on the Marquette Property, one of the properties to which the Receiver sought to be deemed the rightful owner in the action forming the basis of the Receiver's lis pendens. Long Beach improperly argues that the Receiver and the

California Court lacked jurisdiction over the Marquette Property because the Receiver allegedly failed to timely file the order appointing him Receiver of TLC America, Inc. Long Beach, as it has done at every stage of this appeal, misconstrues the law and the facts in its Petition. Petitioner cannot deny, and in fact admits, that 28 U.S.C. Section 754 authorizes federal district courts to exercise intradistrict in rem jurisdiction over property located in other districts. 28 U.S.C. §§ 754, 1692 (2006). As a result of this concession, Long Beach has resorted to technical arguments that the Receiver allegedly failed to comply with the statutory requirements for invoking jurisdiction. Long Beach's arguments are entirely incorrect—the Receiver complied with the requirements of Section 754 and his appointment order was timely filed in Texas.

Further, Long Beach's assertion that that the opinion of the Fifth District Court of Appeals in Dallas, Texas (the "Dallas Appeals Court") is in conflict with federal law or any decision of the federal circuit courts is also incorrect and insupportable. Petitioner's arguments are simply smoke and mirrors. The "conflict" presented by Long Beach is entirely concocted and does not meet the standards for this Court's review under Supreme Court Rule 10, which Long Beach tellingly ignores in its Petition. The Dallas Appeals Court correctly applied 28 U.S.C. Sections 754 and 1692 in a manner consistent with the language of those statutes and federal case law, and correctly held that the California Court had in rem jurisdiction over the Marquette Property. 28 U.S.C. §§ 754, 1962 (2006); *see* U.S. SUP. CT. R. 10. There is

harmony between and among the Dallas Appeals Court and the federal courts regarding the interpretation and application of Section 754. Moreover, Petitioner's unfounded complaint that the courts merely misapplied Section 754 does not present a sufficient basis for review. *See* U.S. SUP. CT. R. 10. (stating that "a petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

Although Petitioner admits in its Petition that Sections 754 and 1692 authorize federal district courts to exercise intradistrict in rem jurisdiction over property located elsewhere, in its second argument, Petitioner conveniently ignores those statutes and asserts instead that the local action doctrine alone governs jurisdiction in cases such as this one. But Petitioner cannot change the jurisdictional mandate expressed by Congress in Sections 754 and 1692 by ignoring it, and this Court should not entertain such a constitutionally specious argument by granting review.

Petitioner's final argument regarding implied preemption also fails to meet the standard for review because it neither presents a state/federal conflict nor an issue of first impression. U.S. SUP. CT. R. 10. Any conflict with the local action doctrine imagined by Long Beach is based in Sections 754 and 1692, congressional mandates that specifically govern the powers and jurisdiction of federal receivers and receivership courts and trump the local action doctrine, a concept of common law.

Because Petitioner fails to present any issues worthy of this Court's consideration and fails to meet the standard for review by this Court, its Petition for a Writ of Certiorari should be denied.

BACKGROUND FACTS

I. Robb Evans is Appointed Receiver for the Assets of TLC America, Inc.

In 2000, the Securities and Exchange Commission, in *Sec. & Exch. Comm'n v. TLC Investments & Trade Co., et al.*, Case No. SACV 00-960-DOC, in the U.S. District Court for the Central District of California (the "SEC Litigation"), brought suit against TLC America, Inc. ("TLC America") and related business entities and individuals for federal securities laws violations for the misuse and diversion of over $28 million in investor funds.[1] In the SEC Litigation, the California federal court initially appointed Robb Evans as Temporary Receiver on October 4, 2000 (the "October 4, 2000 Order").[2] This temporary appointment order gave Robb Evans the "full powers of an equity receiver . . . with full power over all funds, assets, collateral, [and] premises . . . of TLC."[3] The

[1] C.R. Vol. 2, p. 67. "C.R." refers to the Clerk's Record, which consists of five separate volumes filed in the Dallas Appeals Court. Citations to Respondent's Appendices, which are attached, are denoted herein as "Resp. App."

[2] C.R. Vol. 3, pp. 423, 425, 432-34; Resp. App. at 3-7.

[3] C.R. Vol. 3, p. 432; Resp. App. at 4.

October 4, 2000 Order also immediately authorized the Receiver to "have access to and to collect and to take custody . . . of all assets . . . of TLC" and "to take such action as is necessary and appropriate to preserve . . . any assets of TLC."[4] This initial order of appointment created a receivership estate for the assets of TLC America, and it established Robb Evans as the Receiver of that estate. The October 4, 2000 Order *did not provide a date for any expiration* of the receivership estate or the establishment of Robb Evans as Receiver of TLC America.[5] On October 13, 2000, the Receiver filed his initial order of appointment and the Complaint in the SEC Litigation in the United States District Court for the Northern District of Texas.[6]

On November 1, 2000, the court in the SEC Litigation entered an order appointing Robb Evans as Permanent Receiver of TLC America (the "November 1, 2000 Order").[7] The November 1, 2000 Order continued the same receivership powers and authorities imbued in Robb Evans by the October 4, 2000 Order.[8] The November 1, 2000 Order likewise continued the receivership estate initially created by the October 4, 2000 Order.[9] On December 20, 2000, the Receiver

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[4] C.R. Vol. 3, pp. 432-33; Resp. App. at 4-6.

[5] C.R. Vol. 3, pp. 422-42; Resp. App. at 3-7.

[6] C.R. Vol. 3, pp. 423, 443, 485; Resp. App. at 1, 7.

[7] C.R. Vol. 3, pp. 463, 471-74; Resp. App. at 10-15.

[8] C.R. Vol. 3, pp. 471-74; Resp. App. at 11-14.

[9] *Id.*

mailed this order of permanent appointment to the United States District Court for the Northern District of Texas for filing.[10] On January 2, 2001, the Clerk of the United States District Court for the Northern District of Texas stamped the order as received.[11]

II. The Receiver Sues to Recover TLC America's Property.

The Receiver then brought suit to recover TLC America's property in *Robb Evans, as Receiver for TLC America, Inc. v. James F. Garro, David Price, et al.*, Case No. SACV 01-6466, in the U.S. District Court for the Central District of California (the "Garro Litigation").[12] The Receiver asserted claims of fraud, conversion, negligence and breach of fiduciary duty.[13] The Receiver also sought the imposition of a constructive trust on property purchased with funds stolen from TLC America.[14] Importantly, the Receiver did not simply plead constructive trust to satisfy any money judgment he received on his other causes of action. Rather, the Receiver requested an order declaring that the defendants held purchases or investments made with TLC America funds in a constructive trust for the benefit of TLC America and

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[10] C.R. Vol. 3, p. 462; Resp. App. at 8.

[11] C.R. Vol. 3, pp. 462, 463; Resp. App. at 8.

[12] C.R. Vol. 2, pp. 66, 67.

[13] C.R. Vol. 2, pp. 67, 102.

[14] C.R. Vol. 2, pp. 67, 139-40.

declaring TLC America the owner of the purchases or investments made with TLC America funds.[15] Thus, on the face of the Receiver's complaint, the Receiver sought an interest in any and all property purchased with TLC's funds.

III. The Receiver Learns of the Marquette Property and Files a Lis Pendens.

Specifically, over $2.5 million of TLC America's funds had been wired into a Durham Capital Group, Inc. ("Durham") bank account controlled by David Price, the President of Durham, and his now former wife, Carol Miller Price (collectively, the "Prices").[16] During the course of the Garro Litigation, the Receiver discovered that over $1 million of the funds transferred into the Durham account controlled by David Price and Carol Miller Price were diverted into an account separately controlled by Carol Miller Price.[17] Carol Miller Price then used this money to purchase the Marquette Property.[18] Through discovery in the Garro Litigation, the Receiver learned of the Marquette Property in July 2002.[19] Immediately upon discovering the Marquette Property, the Receiver filed a Notice of Lis Pendens providing

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[15] C.R. Vol. 2, pp. 139-40.

[16] C.R. Vol. 2, p. 284.

[17] C.R. Vol. 2, p. 285.

[18] C.R. Vol. 2, pp. 285-86.

[19] C.R. Vol. 2, pp. 67-68, 285-86.

notice of his interest and rights in the Marquette Property.[20] The Receiver filed the Notice of Lis Pendens on July 23, 2002.[21]

IV. Long Beach Loans Money to the Prices and Records a Lien.

On July 24, 2002, one day after the Receiver's lis pendens was filed, the Prices entered a $400,000 home equity loan with Long Beach.[22] A deed of trust on the Marquette Property secured this loan.[23] On August 2, 2002, Long Beach filed the deed of trust in the Dallas County Real Property Records, creating a lien claim on the Marquette Property.[24] It is undisputed that the Prices defaulted on their loan with Long Beach, and now Long Beach's claim has clouded title to the Marquette Property. Tellingly, Long Beach *never* foreclosed on its claimed interest in the Marquette Property.[25]

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[20] C.R. Vol. 2, pp. 67-68; Resp. App. at 16-17.

[21] C.R. Vol. 2, pp. 68, 145-48; Resp. App. at 16.

[22] C.R. Vol. 2, pp. 68, 151-64; Resp. App. at 18.

[23] *Id.*

[24] *Id.*

[25] C.R. Vol. 2, p. 68.

V. A Constructive Trust is Imposed on the Marquette Property.

After a trial on the merits, the California federal court, on or about December 16, 2002, in the Garro Litigation found David Price liable for the fraudulent transfer of TLC America's funds in the amount of $3,505,001.59.[26] The court also imposed a constructive trust "over the real property, fixtures and furnishings located at 7843 Marquette, Dallas, Texas."[27] The court further held that "Defendants . . . and their agents, servants, assigns and those acting in concert with them are enjoined from engaging in any activities to transfer, secret or dissipate these assets."[28]

The California federal court also made findings of fact that further demonstrated the direct connection between the Marquette Property and the Garro Litigation.[29] Based on these facts, the court imposed a constructive trust on the Marquette Property "in order to prevent the unjust enrichment of" David Price.[30] Importantly, the court in the Garro Litigation specifically found that it had jurisdiction over the case based on 28 U.S.C. Section 1331 and the broad jurisdictional grant of 28 U.S.C. Section 754, which extended the court's ancillary jurisdiction anywhere

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[26] C.R. Vol. 2, pp. 68-69, 174-75, 191-92.

[27] C.R. Vol. 2, pp. 175, 191-92.

[28] *Id.*

[29] C.R. Vol. 2, pp. 184-85.

[30] C.R. Vol. 2, p. 191.

in the United States that receivership property is located.[31]

VI. The Receiver is Authorized to Sell the Marquette Property "Free and Clear."

After the constructive trust was imposed in the Garro Litigation, in 2003, the Receiver petitioned the court in the SEC Litigation for permission to sell the Marquette Property.[32] The court in the SEC Litigation granted the Receiver permission to sell the Marquette Property "free and clear of all liens and interests therein, with such liens and interests to attach to the net proceeds of sale."[33] The court further ordered that "the sale proceeds shall be held in trust by the Receiver pending resolution of all disputes concerning distribution of the sale proceeds and any claimed interests in the Property."[34] The court also ordered David Price, Carol Price, Long Beach and any other third party claimant to file a claim with the court within 60 days if they intended to assert an interest in the sale proceeds.[35] The court authorized the Receiver to "perform any and all . . . acts necessary to effectuate the orderly sale of the Property."[36]

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[31] C.R. Vol. 2, p. 188.

[32] C.R. Vol. 2, pp. 69, 197-239.

[33] C.R. Vol. 2, pp. 242-44.

[34] C.R. Vol. 2, p. 244.

[35] C.R. Vol. 2, p. 243.

[36] *Id.*

The Receiver originally arranged to sell the Marquette Property to Sally K. Johnson for $838,000.[37] Given the various claims to the Marquette Property, the sales contract with Ms. Johnson was extended several times while the outstanding claims to the Marquette Property are resolved.[38] As a result of the successive appeals and the continued delays caused by Long Beach, the sale to Ms. Johnson has since been lost.

VII. Full Fee Simple Title to the Marquette Property is Vested in the Receiver.

Carol Miller Price, a Dallas resident, ignored the California federal court's order in the SEC Litigation and did not file a claim in that proceeding.[39] She still asserted a claim to the title to the Marquette Property, clouding title and thwarting the Receiver's efforts to secure title insurance to sell the Marquette Property to Ms. Johnson.[40] The Receiver then registered the judgment imposing the constructive trust for enforcement in the U.S. District Court for the Northern District of Texas in *Robb Evans, as Receiver for TLC America, Inc. v. James F. Garro, David Price, et al.*, Case No. 3:03-MC-00022-M.[41] In 2004, the

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[37] C.R. Vol. 2, pp. 69, 214.

[38] C.R. Vol. 2, p. 69.

[39] *Id.*

[40] *Id.*

[41] *Id.*

Northern District of Texas divested David Price and Carol Miller Price of all title and interest to the Marquette Property and vested full fee simple title to the Marquette Property in the Receiver.[42] The court also authorized the Receiver to sell the Marquette Property and to convey full fee simple title to the Marquette Property.[43] The court's orders enforcing the constructive trust against the Prices reinforce the fact that neither David Price nor Carol Miller Price had a legitimate claim to the Marquette Property to begin with. The Marquette Property was purchased by the Prices with stolen money, and as a result, the Prices were merely holding the property in trust for Robb Evans, as Receiver for TLC America, the rightful owner.

VIII. Long Beach's Lien Claim Clouds Title to the Marquette Property.

Long Beach did not file a claim in the SEC Litigation pursuant to the California federal court's March 30, 2004 Order on Amended Ex Parte Application.[44] Long Beach has asserted that it did not file a claim because it allegedly was not served with the Order on Amended Ex Parte Application, providing the 60-day deadline to assert a claim to the sale

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[42] C.R. Vol. 2, pp. 69-70, 247-48, 251-53.

[43] *Id.*

[44] C.R. Vol. 2, p. 70.

proceeds.[45] Therefore, the California federal court did not resolve Long Beach's lien claim, which has clouded title to the Marquette Property and impeded the sale to Ms. Johnson since title insurance could not be produced to close the sale to Ms. Johnson.[46]

IX. The Receiver Files Declaratory Suit in Texas State Court and Prevails in the Trial Court, the Dallas Appeals Court and the Texas Supreme Court.

The Receiver filed a declaratory judgment action against Long Beach in the Dallas County district court to resolve the competing claims to the Marquette Property.[47] On January 22, 2007, the trial court granted the Receiver's summary judgment motion and entered a Final Judgment in favor of the Receiver, declaring the Receiver's lis pendens valid, effective, and superior to Petitioner's lien claim to the Marquette Property; declaring Petitioner's lien claim void and of no force or effect concerning the Property; vesting and quieting full title and interest in the property in Respondent; authorizing Respondent to

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[45] *Id.*

[46] *Id.*

[47] C.R. Vol. 1, pp. 7-13.

sell the Property; and awarding Respondent attorneys' fees.[48]

The Dallas Appeals Court affirmed the trial court's judgment, specifically holding that Respondent and the California Court had jurisdiction over the Marquette Property pursuant to 28 U.S.C. Section 754 and applicable Federal authority. *Long Beach Mortg. Co. v. Evans*, 284 S.W.3d 406, 412 (Tex. App.—Dallas 2009), *reh'g overruled* (June 17, 2009), *review denied* (Nov. 20, 2009), *cert. filed* (Apr. 15, 2010).[49] Petitioner filed a Petition for Review with the Texas Supreme Court, Respondent filed a Response Brief, and the court denied the Petition.[50] Now, Long Beach has frivolously continued its successive appeals to this Court, filing an unwarranted and insupportable Petition for a Writ of Certiorari, which should be summarily denied.

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[48] C.R. Vol. 4, pp. 631-34; Pet. App. B. Citations to Petitioner's Appendices, which are attached to the Petition for a Writ of Certiorari, are denoted herein as "Pet. App."

[49] Pet. App. A.

[50] Pet. App. C.

LONG BEACH'S PETITION SHOULD BE DENIED

I. The Dallas Appeals Court's Decision that the Receiver Properly Invoked In Rem Jurisdiction under 28 U.S.C. Section 754 is Fully Consistent with and Supported by the Federal Circuits, Which are in Harmony Regarding the Correct Interpretation and Application of Section 754. Petitioner's Asserted "Conflict" is Illusory.

Supreme Court Rule 10 and this Court's established opinions clearly provide that review is unwarranted on the basis of a conflict between the courts where the asserted conflict is illusory. *See* U.S. SUP. CT. R. 10(b), (c); *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 79 (1955). A petition for writ of certiorari should only be granted in cases "where there is a real and embarrassing conflict of opinion and authority between the [courts]." *Rice*, 349 U.S. at 79. In the case at hand, there is no such conflict. Contrary to Long Beach's insinuations, there is no conflict between the Dallas Appeals Court's opinion and federal decisions concerning the interpretation or application of Section 754. Further, the federal circuits consistently apply and interpret Section 754.

A. The Receiver Timely Complied with Section 754.

Long Beach has repeatedly acknowledged and admitted that, pursuant to 28 U.S.C. Sections 754 and 1692, the Receiver is empowered to collect assets

anywhere in the United States. Long Beach again concedes this point in its Petition to this Court. The territorial jurisdiction of the receivership court, here the U.S. District Court for the Central District of California, extends to any district where property of the receivership estate may be located, even if the property is located in different states across the nation. *See Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 822, 824 (6th Cir. 1981), *cert. denied*, *First Nat'l Bank of Alabama-Huntsville v. Haile*, 455 U.S. 949 (1982); *Sec. & Exch. Comm'n v. Cook*, No. 3-01-CV-0480-R, 2001 WL 803791, at *2 (N.D. Tex. July 11, 2001); *Select Creations, Inc. v. Paliafito Am., Inc.*, 852 F. Supp. 740, 780-81 (E.D. Wis. 1994) (rejecting reliance on state law and the argument that Court through the Receiver could not reach property located outside of Wisconsin).

Section 754 provides, in pertinent part, that a receiver:

> . . . shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C. § 754. Section 1692 provides:

> In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, ***situated in different***

> ***districts***, process may issue and be executed in any such district as if the ***property lay wholly within one district***, but orders affecting the property shall be entered of record in each of such districts.

28 U.S.C. § 1692 (emphasis supplied).

The Sixth Circuit in the *Haile* decision summed up the operation of these statutes:

> We begin with the undisputed proposition that the initial suit which results in the appointment of the receiver is the primary action and that any suit which the receiver thereafter brings in the appointment court in order to execute his duties is ancillary to the main suit. As such, the trial court has ancillary subject matter jurisdiction of every such suit irrespective of diversity, amount in controversy or ***any other factor which would normally determine jurisdiction***.

See Haile, 657 F.2d at 822 (emphasis supplied) (*citing Pope v. Louisville, New Albany & Chi. Ry. Co.*, 173 U.S. 573 (1899)).

The Sixth Circuit succinctly concluded that:

> The court in which the federal receiver is appointed thus has ancillary subject-matter jurisdiction of suits brought by the receiver in the execution of his duties, and the court's geographical jurisdiction is extended to all

> districts where receivership property is found.

Id. at 824.

Receivers are typically appointed in equity for the purpose of preserving and collecting property for the benefit of the receivership estate, established in this instance for the benefit of the victims of securities fraud. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995). The purpose of Sections 754 and 1692 is to provide a receiver and the receivership court with nationwide jurisdiction to make it easier to adjudicate interests in property that are subject to the receivership estate. Such broad jurisdiction is a well recognized concept in connection with bankruptcy trustees and bankruptcy courts, which have nationwide jurisdiction to adjudicate interests and claims to assets within the bankruptcy estate. *See Matter of Rimsat, Ltd.*, 98 F.3d 956, 961 (7th Cir. 1996) ("[T]he efficacy of the bankruptcy proceeding depends on the court's ability to control and marshal assets of the debtor wherever located"). Receivership estates, like bankruptcy estates, are so powerful that they even extend internationally. *See In re French*, 440 F.3d 145, 151 (4th Cir. 2006), *cert. denied*, *French v. Liebman*, 549 U.S. 815 (2006); *In re Gucci*, 309 B.R. 679, 681 (S.D.N.Y. 2004); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1186-87 (11th Cir. 1991) (holding receiver had power to assert authority

over property in foreign country under order allowing such action as to both personal and real property).

Although Long Beach acknowledges the applicability of these statutes, it attempts to avoid them by claiming that the Receiver did not timely file his order of appointment within the ten-day period provided by Section 754. Long Beach's ultra-technical argument is simply incorrect.

Long Beach does not dispute that Robb Evans filed the October 4, 2000 Order appointing him Receiver of TLC America in the Northern District of Texas within the ten-day period provided by Section 754. The October 4, 2000 Order was filed in the Northern District of Texas on October 13, 2000, only nine days later.[51] Pursuant to Sections 754 and 1692, jurisdiction of the Receiver and the California federal court was, therefore, established upon the timely filing of the October 4, 2000 Order and the Receiver's Complaint in the Northern District of Texas on October 13, 2000. Importantly, the October 4, 2000 order ***never expired***.[52]

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[51] C.R. Vol. 3, p. 423; Resp. App. at 1, 3, 7.

[52] C.R. Vol. 3, pp. 422-42; Resp. App. at 3-7. The October 4, 2000 Order contained several separate orders, including an order granting a temporary restraining order (the "TRO") and the order of initial appointment of Robb Evans as receiver. Only the TRO, *not* the appointment order, expired under the terms of the Order and as required by Federal Rule of Civil Procedure 65.

Long Beach suggests that even after timely filing the initial order appointing him receiver, Robb Evans was required to re-file the order appointing him permanent receiver. Section 754, which does not distinguish between temporary and permanent orders, does not require this. 28 U.S.C. § 754. The legislative purpose behind Sections 754 and 1692 is to assist receivers with their duties, not to burden them with duplicative filing requirements for appointment orders.[53] The point of these statutes is to make the receiver's job easier in retrieving receivership assets to make the victims that a receiver represents whole again. *See Sec. & Exch. Comm'n v. Infinity Group Co.*, 27 F. Supp. 2d 559, 567 (E.D. Pa. 1998) (finding that the court, in a securities violations suit, had "'authority to grant the full panoply of equitable remedies so that the [victims] can obtain complete relief,'" including "disgorgement, asset freezes, ***appointments of receivers***, repatriation of assets, constructive trusts, and restitution.") (emphasis supplied). Significantly, Long Beach has consistently failed to present any case law that reads such a duplicative filing requirement into Section 754.

By filing the October 4, 2000 Order initially appointing him Receiver for TLC America in the

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[53] Indeed, it would be unjust to divest a receiver of jurisdiction where a receiver later discovers property in a jurisdiction that the receiver did not have knowledge of within the ten day time period. To do so would be unfair to the victims represented by the receiver.

Northern District of Texas on October 13, 2000, Robb Evans met the ten-day requirement of Section 754 and established his and the California Court's jurisdiction over the Marquette Property. It is irrelevant that the November 1, 2000 Order, which simply continued the receivership and the Receiver's power and authority established in the October 4, 2000 Order, was filed in the Northern District of Texas more than ten days after its entry. Jurisdiction had already been established by the filing of the October 4, 2000 Order.

B. The Dallas Appeals Court's Determination that the Receiver Properly Invoked the California Court's Jurisdiction under Section 754 is Correct and Consistent with the Federal Circuits.

Based on the foregoing facts and the language of the statute, the Dallas Appeals Court correctly determined that the Receiver property invoked the California Court's jurisdiction under Section 754. Significantly, the decision is also consistent with the federal circuits that have opined on the application of Section 754's filing requirements. As such, there is no basis for review due to a "conflict" between the Dallas Appeals Court and the federal courts. *See* U.S. SUP. CT. R. 10; *Rice*, 349 U.S. at 79.

As stated, it is irrelevant under Section 754 that the permanent order of appointment, which continued the established jurisdiction of the California Court, was filed in the Northern District of Texas more than ten days after being entered. Even if the time limits of Section 754 applied to the Receiver's filing of the permanent appointment order, the case law consistently holds that any belated filing was effective to invoke jurisdiction under Section 754, given that Petitioner was not prejudiced as a result. *Sec. & Exch. Comm'n v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1136 (9th Cir. 1996), *cert. denied*, *Shelton v. Barnes*, 520 U.S. 1185 (1997), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998); *Sec. & Exch. Comm'n v. Vision Commc'ns, Inc.*, 74 F.3d 287, 288 (D.C. Cir. 1996); *U.S. v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984); *Sec. & Exch. Comm'n v. Equity Serv. Corp.*, 632 F.2d 1092, 1095 (3d Cir. 1980). Indeed, Petitioner could not have suffered any prejudice or harm due to a delay in filing the permanent order of appointment, because the order was filed in the Northern District of Texas more than a year and a half ***before*** the Receiver filed the lis pendens and Petitioner entered the deed of trust, and nearly two years ***before*** the California Court imposed a constructive trust on the Marquette Property. Even if the second filing were required, Petitioner has not, and indeed cannot, show a shred of evidence that it was prejudiced as a result.

As such, the Dallas Appeals Court's decision is correct and consistent with the holdings in *Equity*

Service Corp., Arizona Fuels Corp., Vision Communications, and *American Capital Investments*. Because this case has been correctly decided and presents no conflict of authority, Long Beach has failed to meet this Court's standards for exercising review. *See* U.S. SUP. CT. R. 10; *Rice*, 349 U.S. at 79.

C. The Federal Circuits are in Harmony Concerning Section 754.

Long Beach suggests in its Petition that the federal circuits are somehow in conflict in connection with the application of Section 754's filing requirements. The cases, again, are consistent in finding that that a receiver may invoke jurisdiction under Section 754 by either timely filing a complaint and order of appointment, or by belatedly filing them so long as the belated filing occurs before the case is heard, *i.e.*, before any party is prejudiced by the belated filing. *Am. Capital Invs., Inc.*, 98 F.3d at 1136; *Vision Commc'ns, Inc.*, 74 F.3d at 288; *Arizona Fuels Corp.*, 739 F.2d at 460; *Equity Serv. Corp.*, 632 F.2d at 1095. Long Beach attempts to muddle the landscape of the existing case law, but regardless of Long Beach's vague and confusing assertions in its Petition, the federal circuits are in harmony concerning Section 754.

In *Equity Service Corp.*, a federal receiver appointed in an S.E.C. action died before complying with the filing requirements of Section 754 and gaining jurisdiction over certain oil and gas wells

located in a foreign district. *Equity Serv. Corp.*, 632 F.2d at 1093. His replacement did not comply with Section 754 until several months after being appointed. *Id.* More than a year later, the well owners sought to enjoin him from operating the wells by challenging his jurisdiction based on his failure to timely comply with the filing requirements of Section 754. *Id.* at 1094. The Third Circuit held that the receiver had jurisdiction under Section 754 despite the belated filing because the well owners failed to show any harm from the lack of notice in the interim. *Id.* at 1095.

In *Arizona Fuels Corp.*, the Receiver never complied with the filing requirements of Section 754. Nevertheless, the Ninth Circuit held that the Receiver had jurisdiction over the intangible personal property at issue because: (1) the party challenging jurisdiction was not prejudiced by the failure to file because it had received a copy of the complaint and order of appointment and had actual notice of the receivership proceedings, which it participated in; (2) the receivership court had personal jurisdiction over the complaining party separate from Section 754; and (3) the court reasoned that the filing requirement under Section 754 should not apply where the two considerations above are present. *Arizona Fuels Corp.*, 739 F.2d at 460-61. Long Beach relies upon *Arizona Fuels Corp.* to suggest that jurisdiction was improperly asserted in this case. *Arizona Fuels Corp.*, however, simply does not apply to the case at hand. The Ninth Circuit determined that it was not a

requirement that Section 754 be complied with in that case because the assets at issue were personal property "in the form of a monetary credit, held by a party over whom the court already has jurisdiction, who has actual notice of the receivership and has previously appeared in the receivership court" and thus "there is no purpose served in requiring the Receiver to trace the funds to Houston and make a § 754 filing there." *Id.* at 460-61. As a result, there is no conflict between this case and the other cases cited by Petitioner as they relate to the issues presented here. Petitioner implicitly acknowledges as much by merely citing this case in a footnote without any discussion. Petitioner cannot create a circuit split on the issues presented in this case by citing to inapposite cases.

The opinion in *Vision Communications* is in harmony with the decisions in *Equity Service Corp.* and *Arizona Fuels Corp.* In *Vision Communications*, the issue was whether the receiver had acquired in rem jurisdiction over certain transmission rights, including a site lease for a transmission tower, by complying with the filing requirements of Section 754. *See Vision Commc'ns, Inc.*, 74 F.3d at 289; *Sec. & Exch. Comm'n v. Vision Commc'ns, Inc.*, No. 94-0615 (CRR), 1994 WL 855061, at *1 (D.D.C. June 28, 1994) (describing rights at issue as including a site lease for a transmission tower). The Receiver belatedly filed the documents required by Section 754, but not until after the court issued an injunction against the party challenging jurisdiction. *Vision Commc'ns,*

Inc., 74 F.3d at 290. The court acknowledged the *Equity Service Corp.* and *Arizona Fuels Corp.* opinions, and the concept that jurisdiction could be obtained under Section 754 by a belated filing before the case was heard (*i.e.*, where the complaining party was not prejudiced), but held that a belated filing could not confer jurisdiction *retroactively* where an injunction had already been entered. *Id.* at 291. Thus, *Vision Communications* is not in conflict with *Equity Service Corp.* and *Arizona Fuels Corp.*, but is merely distinguishable from them, and recognizes that a belated filing can still invoke jurisdiction under Section 754 where the parties are not prejudiced. *See id.*

Petitioner further mischaracterizes the holding in *American Capital Investments*. In that case, the court did not "specifically h[o]ld that appointment of a permanent receiver *required* the timely filing of a notice pursuant to [Section] 754." *See* Pet. p. 10 (emphasis added). Rather, the court merely held that such a filing was sufficient to invoke jurisdiction under Section 754 where a timely filing was not made within ten days of the district court's issuance of an order of temporary appointment. Thus, *American Capital Investments* stands for the proposition that where a temporary appointment is not timely filed, a permanent appointment provides a new window for timely filing. But it does not follow, as Petitioner suggests, that Section 754 requires the inefficiency of a second filing after a permanent appointment despite the prior timely filing of a temporary

appointment. To the contrary, the court pointed out that even if the filing was late, the complaining party had not shown any resulting prejudice, thereby recognizing (consistently with *Equity Service Corp.*, *Arizona Fuels Corp.*, and *Vision Communications*) that a belated filing still invokes jurisdiction under Section 754 in the absence of prejudice.

Ultimately, the cases cited by Petitioner are in harmony rather than conflict, and stand for the proposition that a belated filing still invokes jurisdiction under Section 754 where the complaining party's rights are not prejudiced. Because there is no "real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals" on this issue, this case fails to meet the standards for exercising review. *Rice*, 349 U.S. at 79; *see also* U.S. SUP. CT. R. 10.

II. Petitioner's Local Action Doctrine Argument Rests on the Tenuous Constitutional Premise that Congress is Without Power to Effect the Courts' In Rem Jurisdiction under Section 754. Regardless, the Local Action Doctrine is Irrelevant in the Context of the Receivership Jurisdiction Granted under Sections 754 and 1692.

Petitioner's second argument regarding the local action doctrine also fails to meet the standards for review because (1) it rests on a faulty constitutional premise, and (2) the local action doctrine is irrelevant

in the context of receivership jurisdiction under Sections 754 and 1692.

A. Petitioner's Local Action Doctrine Argument is Based on a Faulty Constitutional Premise, Making Review Improper.

As this Court has recognized, arguments based on tenuous constitutional premises are unworthy of review. *See Brennan v. U.S. Postal Serv.*, 439 U.S. 1345, 1346 (1978) (recognizing that arguments based on tenuous constitutional premises are unlikely to be granted review). Petitioner's local action doctrine argument fails to meet the standards for review because it is based on the faulty premise that Congress lacks the power to set the courts' jurisdiction.

In the first part of its Petition, Petitioner correctly acknowledges that Sections 754 and 1692 authorize federal district courts to exercise intra-district in rem jurisdiction over property located elsewhere in the context of receivership proceedings. As the courts have recognized, "'Together, [Sections 754 and 1692] give a receivership court both in rem and in personam jurisdiction in all districts where property of the receivership estate may be located.'" *Warfield v. Arpe*, CIVA 3:05CV1457 R, 2007 WL 549467, at *11 (N.D. Tex. Feb. 22, 2007) (*quoting Quilling v. Stark*, 3:05-CV-1976-L, 2006 WL 1683442, at *3 (N.D. Tex. June 19, 2006) (*citing Vision Commc'ns, Inc.*, 74 F.3d at 290; *Haile*, 657 F.2d at 823).

But then Petitioner conveniently ignores its own admission and the law in its second argument, contending instead that the local action doctrine alone governs jurisdiction in cases such as this one. Petitioner cannot change Congress's jurisdictional mandate under Sections 754 and 1692 by ignoring it, and this Court should not entertain such a constitutionally specious argument by granting review.

As the Court has repeatedly recognized, only Congress has the power to determine the jurisdiction of federal courts, and as such, state jurisdictional matters at common-law, including the "local action doctrine," are simply irrelevant in the federal receivership context. *Bowles v. Russell*, 551 U.S. 205, 212-13 (2007) (stating that "Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider. Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them."); *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004) (stating that "Only Congress may determine a lower federal court's subject-matter jurisdiction."). Indeed, it is difficult to imagine a more constitutionally tenuous premise than the one underlying Petitioner's local action doctrine argument: that Congress lacks the power to set the courts' jurisdiction. Because Petitioner's second argument is based on such a tenuous premise, it wholly fails to meet the standard for review. *See Brennan*, 439 U.S. at 1346. Moreover, this argument fails to meet the standards of review under Supreme

Court Rule 10 because Petitioner is merely contending that the local action doctrine has been improperly applied. *See* U.S. SUP. CT. R. 10.

B. Regardless, the Local Action Doctrine is Irrelevant in the Context of the Receivership Jurisdiction Granted under Sections 754 and 1692.

Petitioner's local action doctrine argument fails to merit review because the local action doctrine is irrelevant in the context of the receivership jurisdiction granted under Sections 754 and 1692. Long Beach openly admits the application of Sections 754 and 1692 to provide a receiver and receivership court with jurisdiction over property located in other districts, including orders affecting such property. As discussed above, the Receiver complied with the necessary statutory requirements. Thus, the local action doctrine is totally inapplicable.

The territorial jurisdiction of the receivership court extends to any district where property of the receivership estate may be located, even if the property is located in different states across the nation. *See Haile*, 657 F.2d at 822, 824; *Cook*, 2001 WL 803791, at *2; *Select Creations, Inc.*, 852 F. Supp. at 780-81. The result is that Sections 754 and 1692 make all actions in the receivership court "local," since the geographic jurisdiction of the court is extended to anywhere receivership property is located. The broad jurisdictional reach of receivership courts

comports with the broad jurisdiction of the receiver itself over receivership property. *Citronelle-Mobile Gathering, Inc.*, 934 F.2d at 1186-87 (holding receiver had power to assert authority over property in foreign country under order allowing such action as to both personal and real property).

Like the bankruptcy court, the receivership court's exercise of in rem jurisdiction creates a fiction that estate property is legally located in the district of the court. *See In re Simon*, 153 F.3d 991, 996 (9th Cir. 1998) (recognizing that the bankruptcy court's exercise of in rem jurisdiction over the debtor's property essentially creates a fiction that the property—regardless of actual location—is *legally* located within the jurisdictional boundaries of the district in which the court sits); *Haile*, 657 F.2d at 823; *Warfield*, 2007 WL 549467, at *11 (recognizing that Sections 754 and 1692 provide for in rem jurisdiction in all districts where receivership property is located). And like the bankruptcy court, the receivership court's power even extends to property located in other countries. *French*, 440 F.3d at 151; *Gucci*, 309 B.R. at 681; *Citronelle-Mobile Gathering, Inc.*, 934 F.2d at 1186-87 (holding receiver had power to assert authority over property in foreign country under order allowing such action as to both personal and real property). Without the far-reaching jurisdictional grants provided by Congress, the bankruptcy and receivership processes would be utterly unworkable. Petitioner invites the Court to limit the jurisdictional reach of the receivership court to the district in which it sits,

which would wreak havoc on that system and require federal receivers to hopscotch across the country, creating utter chaos. The Court should reject that invitation.

The jurisdiction granted under Sections 754 and 1692 is well-recognized by the courts, and renders the local action doctrine inapplicable in this context. Ultimately, Petitioner's complaint is that Sections 754 and 1692 have been misapplied, which is an insufficient basis for review under Supreme Court Rule 10. U.S. SUP. CT. R. 10. Indeed, review of this case is even less appropriate given that the only real issue involved is a narrow priority of claims dispute between the parties under Texas law.

III. Petitioner's Implied Preemption Argument also Fails to Meet Review Standards Because it Neither Presents a State/Federal Conflict nor an Issue of First Impression. Any Conflict with the Local Action Doctrine Imagined by Long Beach is Based in Sections 754 and 1692, Congressional Mandates that Trump the Local Action Doctrine, a Concept of Common Law.

Petitioner's implied preemption argument also fails to meet any standard for this Court's review. Federal courts have recognized, consistently with this Court's jurisprudence, that the jurisdictional reach of Sections 754 and 1692 confer jurisdiction on the receivership court "irrespective of ***any other factor***

which would normally determine jurisdiction." *See Haile*, 657 F.2d at 822.

This case law is well-established, and Petitioner does not even attempt to distinguish it. Petitioner acknowledges the applicability of these statutes, but attempts to raise the notion of "preemption" by citing to case law concerning federal preemption of state law. Preemption, however, is not at issue. Petitioner challenges a federal court's exercise of jurisdiction over the Marquette Property, but Congress legislated the jurisdictional boundaries of federal receivership courts under Sections 754 and 1692, extending jurisdiction over persons and property to other jurisdictions and extending the geographic boundaries of the receivership court to where receivership property is located.

Sections 754 and 1692 make the federal receivership system workable. To limit the jurisdictional reach of the receivership court to the district in which it sits, as Petitioner proposes, would destroy that system and the purpose of the statutes. Only Congress has the power to determine the jurisdiction of federal courts, and as such, state jurisdictional laws, including the "local action doctrine," have no relevance in the receivership context presented here. *See Bowles*, 551 U.S. at 212-13; *Kontrick*, 540 U.S. at 452. The concept of implied preemption simply has nothing to do with the effect of Sections 754 and 1692 on the local action doctrine, which is merely a common-law concept of in rem jurisdiction subject to alteration by Congressional mandate. Indeed, any conflict with the local action doctrine is based in Sections 754 and

1692, which trump the local action doctrine regardless, and not in the Dallas Appeals Court's decision.

Because the case law is in harmony and the jurisdictional reach of Sections 754 and 1692 has long been recognized, Petitioner's implied preemption argument presents neither a state/federal conflict nor an issue of first impression requiring review under Supreme Court Rule 10. U.S. SUP. CT. R. 10; *Rice*, 349 U.S. at 79.

CONCLUSION

For the foregoing reasons, Long Beach's Petition for a Writ of Certiorari should be denied, and the Receiver should be granted such and further relief, at law or in equity, to which he may be justly entitled.

Respectfully submitted,

KAREN L. HART
Counsel of Record
RANDALL K. LINDLEY
ROSS A. WILLIAMS
BELL NUNNALLY & MARTIN LLP
3232 McKinney Avenue, Suite 1400
Dallas, Texas 75204-2429
Telephone: (214) 740-1400
Telecopier: (214) 740-5744
karenh@bellnunnally.com

Attorneys for Respondent
Robb Evans, as Receiver
for TLC America, Inc.

Dressler Rein Evans & Sestanovich LLP
Sixteenth Floor
1925 Century Park East
Los Angeles, CA 90067
Tel (310) 551-3100
Fax (310) 551-0238 Received October 13, 2000

October 11, 2000

By Federal Express

Clerk, United States District Court
Northern District of Texas, Dallas Division
1100 Commerce
Room 14A20
Dallas, TX 75242

Re: Securities and Exchange Commission v. TLC Investments and Trade Co., et al.
USDC Calif. Central District Case No. SACV 00-960-DOC (EEx)
Miscellaneous Case Under 28 U.S.C § 754

To whom it may concern:

This office represents Robb Evans, Receiver, in the above-captioned matter. Enclosed please find certified copies of the following documents:

1. Complaint For Violations of the Federal Securities Laws;

2. Temporary Restraining Order and Orders (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) for Repatriation; (4) Prohibiting the Destruction of Documents; (5) Granting Expedited Discovery; (6) for Accountings; and Order to Show Cause Re

Preliminary Injunction and Appointment of a Permanent Receiver

In accordance with 28 U.S.C. § 754, these documents are being filed in all districts in which property subject to this proceeding may be located. There is no case or proceeding pending in your district for which a filing fee has previously been paid. A check for $20.00 for a miscellaneous filing fee is enclosed.

Please conform the enclosed face sheets and return them to me at your earliest convenience. A self-addressed, stamped envelope is provided. Please contact me at (310) 551-3100 x236 if you have any questions in this regard. Thank you for your assistance.

Very truly yours,

/s/ Judi S. Ehrlich
Judi S. Ehrlich

Encs.

[SEAL]

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. TLC INVESTMENTS & TRADE CO., TLC AMERICA, INC. dba BREA DEVELOPMENT COMPANY, TLC BROKERAGE, INC., dba TLC MARKETING, TLC DEVELOPMENT, INC., TLC REAL PROPERTIES, RLLP-1, CLOUD & ASSOCIATES CONSULTING, INC., ERNEST F. COSSEY, GARY W. WILLIAMS AND THOMAS G. CLOUD, Defendants.	Case No. SACV 00-960 DOC (EEx) TEMPORARY RESTRAINING ORDER AND ORDERS: (1) FREEZING ASSETS; (2) APPOINTING A TEMPORARY RECEIVER; (3) FOR REPATRIATION; (4) PROHIBITING THE DESTRUCTION OF DOCUMENTS; (5) GRANTING EXPEDITED DISCOVERY; (6) FOR ACCOUNTINGS; AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION AND APPOINTMENT OF A PERMANENT RECEIVER

This matter came to be heard upon Plaintiff Securities and Exchange Commission's ("Commission")

Ex Parte Application for a Temporary Restraining Order and Orders: Freezing Assets, Appointing a Temporary Receiver, Repatriating Assets, Prohibiting Destruction of Documents, Granting Expedited Discovery, for Accountings and to Show Cause Re Preliminary Injunction, and Appointment of a Permanent Receiver (the "Application").

* * *

IT IS FURTHER ORDERED that Robb Evans be appointed as temporary receiver of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to or in the possession of or control of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and any of their subsidiaries and affiliates, including any partnerships and joint ventures for which TLC, TLC America, TLC Brokerage, TLC Development, or TLC Real Properties is the Managing General Partner, and that such receiver is immediately authorized, empowered and directed:

A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property of TLC, TLC

America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, collect, receive, and take into possession all such property;

B. to have control of, and to be added as the sole authorized signatory for, all accounts of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, including all accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and any of their employees or agents, have signatory authority, at any bank, title company, escrow agent, financial institution or brokerage firm which has possession, custody or control of any assets or funds of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, or which maintains accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and/or any of their employees or agents have signatory authority;

C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;

D. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment,

or disposition of any assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates;

E. to make an accounting, as soon as practicable, to this Court and the Commission of the assets and financial condition of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and the client assets under their management, and to file the accounting with the Court and deliver copies thereof to all parties;

F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of such agreements as may be necessary and advisable in discharging his or her duties as temporary receiver;

G. to employ attorneys and others to investigate and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties; and

H. to have access to and monitor all mail of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties in order to review such mail which he or she deems relates to the business of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and the discharging of his or her duties as temporary receiver.

VII.

IT IS FURTHER ORDERED that Defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey, Williams and their officers, agents, servants, employees and attorneys, and any other persons who are in custody, possession or control of any

* * *

to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: October 4, 2000

TIME: 7 o'clock p.m.

/s/ David O. Carter
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ Marianne Wisner
Marianne Wisner
Attorney for Plaintiff
Securities and Exchange Commission

(Filed October 5, 2000 – CA)

(Filed Oct. 13, 2000 – TX)

Dressler Rein Evans & Sestanovich LLP
Sixteenth Floor
1925 Century Park East
Los Angeles, CA 90067
Tel (310) 551-3100
Fax (310) 551-0238 Received January 2, 2001

December 20, 2000

Clerk, United States District Court
Northern District of Texas, Dallas Division
1100 Commerce
Room 14A20
Dallas, TX 75242

Re: Securities and Exchange Commission v. TLC Investments and Trade Co., et al., USDC Case No. SACV 00-960-DOC (EEx)
Miscellaneous Case Under 28 U.S.C. § 754
Your Reference Number: #300MC-100

To whom it may concern:

This office represents Robb Evans, Receiver, in the above-captioned matter. On October 11, 2000, we sent you certified copies of (1) Complaint For Violations of the Federal Securities Laws, and (2) Temporary Restraining Order and Orders (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) for Repatriation; (4) Prohibiting the Destruction of Documents; (5) Granting Expedited Discovery; (6) for Accountings; and Order to Show Cause Re Preliminary Injunction and Appointment of a Permanent Receiver. In accordance with 28 U.S.C. § 754, those documents were filed in all districts in which property subject to this proceeding may be located.

A Miscellaneous Filing Fee of $20.00 was provided. Your office thereafter confirmed that the documents were filed on 10/13/00 and assigned Misc. File Number #300MC-100.

On November 1, 2000, the Court issued an "Order of Preliminary Injunction and Orders (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of Documents; (4) for Accountings; (5) for Repatriation, and (6) for Expedited Discovery". A certified copy of the November 1, 2000 Order (which appoints Robb Evans as *Permanent* Receiver) is now enclosed for inclusion with Misc. File Number #300MC-100.

Please conform the enclosed face sheet and return it to me at your earliest convenience. A self-addressed, stamped envelope is provided. Please contact me at (310) 551-3100 x236 if you have any questions in this regard. Thank you for your assistance.

Very truly yours,

/s/ Judi S. Ehrlich
Judi S. Ehrlich

Enclosures

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. TLC INVESTMENTS & TRADE CO., et al. Defendants.	Case No. SACV 00-960-DOC (EEx) [~~PROPOSED~~] ORDER OF PRELIMINARY INJUNCTION AND ORDERS: (1) FREEZING ASSETS; (2) APPOINTING A RECEIVER; (3) PROHIBITING THE DESTRUCTION OF DOCUMENTS; (4) FOR ACCOUNTINGS; (5) FOR REPATRIATION OF ASSETS; AND (6) FOR EXPEDITED DISCOVERY (Filed Nov. 1, 2000 – CA)

This matter came to be heard on October 30, 2000, upon the Court's Order To Show Cause Re Preliminary Injunction And Appointment Of A Permanent Receiver ("OSC"), issued on October 4, 2000 and filed on October 5, 2000. The OSC is included in the Court's Temporary Restraining Order and Orders: Freezing Assets, Appointing a Temporary Receiver, Repatriating Assets, Prohibiting Destruction of Documents, Granting Expedited Discovery, for Accountings

and to Show Cause Re Preliminary Injunction, and Appointment of a Permanent Receiver ("TRO").

* * *

[Names And Bank Number Omitted In Printing]

VII.

IT IS FURTHER ORDERED that Robb Evans be appointed as receiver of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to or in the possession of or control of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and any of their subsidiaries and affiliates, including any partnerships and joint ventures for which TLC, TLC America, TLC Brokerage, TLC Development, or TLC Real Properties is the Managing General Partner, and that such receiver is immediately authorized, empowered and directed:

A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property of TLC, TLC America, TLC Brokerage, TLC Development,

TLC Real Properties, and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, sell, liquidate, collect, receive, and take into possession all such property;

B. to have control of, and to be added as the sole authorized signatory for TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, and their subsidiaries and affiliates, including all accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and any of their officers, employees or agents, have signatory authority, at any bank, title company, escrow agent, financial institution or brokerage firm which has possession, custody or control of any assets or funds of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, or which maintains accounts over which TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and/or any of their officers, employees or agents have signatory authority;

C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;

D. to take such action as is necessary and appropriate to preserve and take control of

and to prevent the dissipation, concealment, or disposition of any assets of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and their affiliates;

E. to make an accounting, as soon as practicable, to this Court and the Commission of the assets and financial condition of TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties and the client assets under their management, and to file the accounting with the Court and deliver copies thereof to all parties;

F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of such agreements as may be necessary and advisable in discharging his or her duties as receiver;

G. to employ attorneys and others to investigate, advise and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties; and

H. to have access to and monitor all mail of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties in order to review such mail which he deems relates to the business of TLC, TLC America,

TLC Brokerage, TLC Development, and TLC Real Properties and the discharging of his duties as receiver;

I. to exercise all of the powers of TLC, TLC America, TLC Brokerage, TLC Development, and TLC Real Properties and their officers, directors, employees, representatives, or persons who exercise similar powers and perform similar duties;

VIII.

IT IS FURTHER ORDERED that Defendants TLC, TLC America, TLC Brokerage, TLC Development, TLC Real Properties, Cossey, Williams and their officers, agents, servants, employees and attorneys, and any other persons who are in custody, possession or control of any assets, collateral, books, records, papers or other property of TLC,

* * *

requests for living expenses if and when their financial situations change. Further, Defendants Cossey and Williams may also renew their requests for attorneys' fees after they submit full accountings to the Court, the Receiver, and the Commission.

XXI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein

and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: ~~October~~ __, November 1, 2000

/s/ David O. Carter
HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ Marianne Wisner
MARIANNE WISNER
Attorney for Plaintiff
Securities and Exchange Commission

NOTICE OF LIS PENDENS

(Filed Jul. 23, 2002)

STATE OF TEXAS	§			1919765
	§	07/24/02	3359469	$11.00
COUNTY OF DALLAS	§	Miscellaneous Real Estate		

NOTICE IS HEREBY GIVEN that Case No., 01-6466, styled *ROBB EVANS, as Receiver for TLC America, Inc., Plaintiff v. James F. Garro, an individual; David Price, an individual; Paul Chovanec, an individual; Allison-McCloskey Escrow Co., a California corporation; Navajo Capital, Inc., a Wyoming corporation; Siena Financial Ltd., a British Virgin Islands corporation; Camelot International, LLC, a Wyoming limited liability company; Merlin Financial, LLC, a Wyoming limited liability company; The Lancelot foundation, a Wyoming nonprofit company; Appaloosa International, Inc., a Wyoming corporation; Citation Financial Management, Inc., a Wisconsin corporation; Durham Capital Group, Inc., a Nevada corporation; & Fortress Financial Ltd., a British Virgin Islands corporation, Defendants;* was commenced in the United States District Court for the Central District of California on July 27, 2001 and is now pending in such court.

The action seeks to establish an interest or a right in real property situated in Dallas County, Texas, and described as follows:

7843 Marquette Street, Dallas, Texas 75225-4400
Caruth Village Phase 2
Blk R/5450 LT 10
VOL 99209/6210 DD 102399 CO-DALLAS

The action is for fraud and deceit; aiding and abetting; conversion; money had and received; negligence; breach of fiduciary duty; and constructive fraud.

SIGNED this 17 day of July, 2002.

/s/ Charles M. Silverman
Charles M. Silverman

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Subscribed and sworn to before me this 17 day of July, 2002 by Charles M. Silverman.

WITNESS my hand and official seal.

/s/ Susan D. Stroud
Notary Public in and For the State of Texas

My commission expires: 5-20-03

FF $31.00 GF#686146. T ATC/mo

After Recording		1932820
Please Return To:	08/02/02	3377095
LONG BEACH MORTGAGE COMPANY	Deed of Trust	$31.00
P.O. BOX 201085		
STOCKTON, CA 95202		

[Space Above This Line For Recording Data]

Loan No: 4585154 Data ID: 278
Borrower: DAVID H. PRICE

THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

TEXAS HOME EQUITY SECURITY INSTRUMENT
(Cash Out – First Lien)

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY INSTRUMENT is made on July 24, 2002. The grantor is DAVID H. PRICE AND WIFE, CAROL M. PRICE

("Borrower").

The trustee is TROY GOTSCHALL, whose address is 1100 TOWN AND COUNTRY ROAD, #1600, ORANGE, CA 92868

("Trustee").

The beneficiary is LONG BEACH MORTGAGE COMPANY, A CORPORATION,

which is organized and existing under the laws of the State of DELAWARE, and whose address is 1100 TOWN & COUNTRY ROAD, #900, ORANGE, CA 92868

("Lender").

Borrower owes Lender the principal sum of FOUR HUNDRED THOUSAND and NO/100 – Dollars (U.S. $ 400,000.00). This debt is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (referred to herein as the "Extension of Credit") and is evidenced by Borrower's note dated the same date as this Security Instrument (the "Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on August 1, 2032. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in DALLAS County, Texas:

BEING LOT 10, BLOCK R/5450 OF CARUTH VILLAGE ADDITION, PHASE II, AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED

IN VOLUME 98008, PAGE 1458, MAP RECORDS, DALLAS COUNTY, TEXAS.

which has the address of 7843 MARQUETTE STREET,
[Street]
DALLAS, TEXAS 75225 ("Property Address").
[City] [Zip Code]

TEXAS HOME EQUITY SECURITY INSTRUMENT
(Cash Out – First Lien) – Fannie Mae/Freddie Mac
UNIFORM INSTRUMENT

* * *